

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F707514

DEBBIE WHITLATCH	CLAIMANT
GREENLAND PUBLIC SCHOOLS	RESPONDENT
ARKANSAS SCHOOL BOARDS ASSOCIATION WCT, INSURANCE CARRIER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED **SEPTEMBER 16, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held on June 30, 2008, in Springdale, Arkansas. A pre-hearing order was entered in this case on May 20, 2008. This pre-hearing order purported to set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the respondents announced that they wanted it clear in the pre-hearing order that the issue of compensability also concerned the question of whether employment services were being performed at the time of the alleged accident. As a result, an addendum was made to issue #1 in the pre-hearing order. The parties also announced that they had agreed on the appropriate weekly compensation rates, should such benefits subsequently be awarded. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On April 23, 2007, the relationship of employee-self employer-third party administrator existed between the parties.

2. The appropriate weekly compensation benefits are \$504.00 for total disability and \$378.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. Whether the claimant sustained a compensable injury to her upper extremities on April 23, 2007, including whether the injuries occurred while employment services were being performed.
2. The claimant's entitlement to medical services.

In regard to these issues, the claimant contends:

“Claimant sustained a compensable injury while working for respondent on or about April 23, 2007. At that time, claimant fell in water on the floor in the faculty bathroom injuring her shoulders, arms, and hands.”

In regard to these issues, the respondents contend:

“The respondents contend that the claimant did not sustain a compensable injury as defined by the Arkansas Workers' Compensation Act. This contention includes, but is not limited to, the failure of the claimant to have measurable and objective findings to support her alleged injury. In addition, the respondents contend the claimant was not performing “employment services” as required by the Arkansas Workers' Compensation Act.”

DISCUSSION

_____The central issue in this case is the question of whether the claimant sustained “compensable injuries” to her upper extremities, as the result of a specific employment-related accident (i.e. a fall) on April 23, 2007. The burden rests upon the claimant to prove all of the facts necessary to establish such compensable injuries.

The first of these required facts are contained in Ark. Code Ann. §11-9-102(4)(D). This subsection states that the claimant must prove by medical evidence, the actual existence of the physical injuries or conditions, which are alleged to be compensable. It also

states that the actual existence of these physical injuries or conditions must further be supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case the medical evidence presented only mentions a physical injury to the claimant’s left upper extremity and shoulder. Absolutely no mention is made of any physical injury to the claimant’s right upper extremity and right shoulder. Nor, does the medical evidence make any mention of an injury to the claimant’s neck.

The only evidence presented to establish the existence of any physical injury to the claimant’s right upper extremity and right shoulder or her neck is the claimant’s own testimony. In this testimony, the claimant stated that she advised all of the physicians she consulted, on and after April 23, 2007, of physical injuries to both of her upper extremities and shoulders, as well as to her neck. The only explanation she offers for the failure of the medical evidence to note injuries to her right upper extremity, right shoulder, and neck is that this was merely an oversight or error on the part of the physicians.

It appears from the medical evidence that the claimant consulted two different physicians (apparently a Dr. Linda Ekman at Medi-Serve Walk-In Clinic and Dr. Larry D. Tuttle, the claimant’s family physician). Both of these physicians failed to note any history of injury or any complaints involving the claimant’s right upper extremity, right shoulder, or neck. I find it somewhat difficult to conceive that both of these physicians would have made the same identical oversight.

Regardless, Ark. Code Ann. §11-9-102(4)(D) imposes upon the claimant the obligation to present medical evidence to establish the actual existence of the physical injuries or conditions, which she alleges to be compensable. This she has simply failed to do, in regard to her right upper extremity, right shoulder, and neck. Therefore, I have no alternative but to find that she has failed to prove the occurrence of “compensable injuries” to these portions of her body.

The claimant has presented sufficient medical evidence to “establish” the existence of a physical injury to her left upper extremity and left shoulder. The reports and records from Medi-Serve Walk-In Clinic diagnose an injury to this portion of the claimant’s body that is in the form of a shoulder strain. Dr. Tuttle, in a AR-3 Physician’s Report, diagnoses tendinitis of the claimant’s left shoulder and mentions the possibility of a rotator cuff tear or brachioplexus stretch.

Although the claimant has satisfied the first requirement of Ark. Code Ann. §11-9-102(4)(D), she must still prove that the actual existence of this physical injury is supported by “objective findings”, as defined by Ark. Code Ann. §11-9-102(16)(A)(i). In other words, she must prove that the existence of the medically diagnosed injury or condition is supported by the independent observation of physical findings that are beyond the claimant’s voluntary control.

A review of the evidence presented shows that the only physical findings that support the actual existence of an injury to the claimant’s left upper extremity and left shoulder are in the form of the claimant’s own subjective complaints. X-rays taken at the Medi-Serve Walk-In Clinic were noted to show no abnormalities. The physical examination performed at the Medi-Serve Walk-In Clinic also failed to note any objective findings or abnormalities involving the claimant’s left upper extremity or left shoulder. The diagnosis of a left shoulder strain was based solely upon the claimant’s subjective complaints, in the form of tenderness in the left shoulder joint, the left trapezius muscle, the left upper rhomboid muscle, and a loss of active range of motion of her left shoulder joint. In a subsequent physical examination performed by Dr. Tuttle, he noted no swelling, no neurological deficit, or no other “objective” abnormalities. Again, his diagnosis was based upon the claimant’s subjective complaints of pain and numbness in the left upper extremity, a partial loss of active range of motion of the left upper extremity, and some “herky-jerky” movements of the left arm.

Although the claimant has proven by medical evidence the actual existence of a physical injury to her left upper extremity and left shoulder, she has failed to prove that the actual existence of this injury is also supported by “objective findings”, as defined by Ark. Code Ann. §11-9-102(16)(A)(i). This failure would prevent the medically established injury to her left arm and left shoulder to represent a “compensable injury” under Ark. Code Ann. §11-9-102(4)(D).

In summary, the claimant has failed to prove the occurrence of a compensable injury to either of her upper extremities or shoulders, as that term is used in Ark. Code Ann. §11-9-102(4)(D). Therefore, I have no alternative but to deny and dismiss this claim in its entirety.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 23, 2007, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On April 23, 2007, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$504.00 for total disability and \$378.00 for permanent partial disability, should such benefits have been appropriate.
4. The claimant has failed to prove that she sustained compensable injuries to her upper extremities and shoulders on April 23, 2007. Specifically, she has failed to prove by medical evidence, which is supported by “objective findings”, the actual existence of physical injuries to these portions of her body, as required by Ark. Code Ann. §11-9-102(4)(D).
5. The respondents have denied the occurrence of any compensable injuries to the claimant's upper extremities and shoulders and have controverted this claim in its entirety.

ORDER

Based upon my foregoing findings and conclusions, this claim must be denied and dismissed in its entirety.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE